



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

February 9, 2006

The Honorable David P. Currier, Chairman
Resources, Recreation, and Development Committee
Room 305, LOB
Concord, NH 03301

RE: House Bill 1462-FN-Local, Relative to Placing a Moratorium on Certain Water Withdrawal Permits

Dear Representative Currier:

Thank you for the opportunity to comment on HB 1462. This bill would place a moratorium on large groundwater and bottled water permits until 90 days after the legislatively established Groundwater Commission completes its work in November, 2008. HB 1462 would apply to new large groundwater withdrawals for commercial water uses and all groundwater withdrawals for bottled water. The law exempts from the moratorium large groundwater withdrawals for public water supply and would not apply to existing permits.

In this letter, we have provided you with some background information to help you understand the large groundwater withdrawal permitting program further. We also provide you with some comments on the proposed legislation.

Groundwater Commission Plans

The Groundwater Commission, which was established to study issues related to groundwater, including groundwater withdrawals, will issue a final report by November 30, 2008. Attached are the workplan and schedule that the Groundwater Commission will be following to study numerous aspects of groundwater withdrawal management and permitting. This should provide you with a complete understanding of the details of the Commission's proposed work.

Large Groundwater Withdrawal Permitting Program

In 1998, RSA 485-C and RSA 485 were amended to require that new large groundwater withdrawals (withdrawals exceeding 57,600 gallons over any 24-hour period) obtain a permit from DES. The 1998 law required DES to adopt regulations for permitting new large groundwater withdrawals that ensure these withdrawals are operated efficiently and do not adversely impact other water users or water resources. DES adopted the large groundwater withdrawal permitting regulations in 2001 after working closely with an advisory stakeholder group over a number of years. The regulatory structure that these put in place for large groundwater withdrawal permitting is among the most comprehensive in the country.

As shown in the following table, since 1998, a total of 11 large groundwater withdrawal permits have been issued under the new rules at an average of just under 2 per year. The types of operations permitted since then are presented in the table below. In addition to specifying flow rates, many of these permits contain permit conditions that describe groundwater and environmental monitoring requirements for each site, operating requirements such as conditions under which flow rate reductions will be required, and

mitigation measures that are required should adverse impacts occur to the environment or other water users.

Status of Large Groundwater Withdrawal Permits Issued (1998-2005)

	Total Permitted Sources	Permitted Sources In Active Operation	Approved Flow Range (gallons per day)		
			Average	Highest Permit	Lowest Permit
Public water supplies	4	3	572,400	712,800	432,000
Golf courses	4	2	198,020	265,000 ¹	131,040
Bottled water operations	3	1	193,364	307,528 ¹	79,200
Total	11	6	317,008 ²	--	--

1. Actual permit is a variable withdrawal rate permit. Maximum permitted volumes only permitted when certain water levels are maintained at specified levels and average precipitation occurs.
2. Average of the maximum permitted production volume of all eleven withdrawals. The average does not reflect that several of the permits have a variable maximum withdrawal rate that is based on water level measurements and precipitation trends.
- Note: The only commercial withdrawals that have applied for a permit to date have been either golf courses or bottled water operations.

Questions Concerning HB 1462

DES believes that clearer direction or bill amendments is required to ensure correct and consistent implementation of legislative intent should HB 1462 become law:

1. *How should applications that DES receives before the bill becomes effective be treated?* At this time, DES has three large groundwater withdrawal applications that are under review that would be covered by the moratorium. Consistent with other state and local permitting programs, in the absence of other guidance, we are obligated to process applications filed prior to the effective date of this or any other more restrictive legislation under preexisting standards and criteria in the absence of other direction from the Legislature.
2. *How should DES treat large groundwater withdrawal applications for public water systems that also have other purposes?* Under the N.H. Safe Drinking Water Acts, 485-C:1-a, XV, "public water system" means "a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year." Under certain conditions, many commercial withdrawals for bottled water facilities, golf courses, industrial operations, shopping malls, etc. will also qualify as public water supplies. Two examples of public water supplies with multi-purpose large groundwater withdrawals: (1) a golf course with a restaurant and irrigation with a common groundwater source and (2) a bottled water facility with 25 fulltime employees that bottles

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groundwater. On the other extreme, we assume that a municipal public water supply system where water is used by bottled water or other beverage industry purposes would be exempt. We need clarification on how to handle these situations.

In conclusion, DES is sensitive to the concerns that have led to the proposed moratorium. However, it should be recognized that the current groundwater withdrawal permitting process has ensured that unmitigated adverse impacts have not occurred to other water users or water resources, and has protected future water supply needs, including in one area where a new large withdrawal has been developed in a small bedrock aquifer with extremely high water use. Clearly, although groundwater is relatively abundant in New Hampshire, there are stressed areas where concern about the impact from large groundwater withdrawal is warranted. DES believes that the existing large groundwater withdrawal permitting program was created and has been operated to address these concerns. Accordingly, we urge you to proceed cautiously if you choose to enact HB 1462 since a moratorium may not be necessary to protect water users and water resources and may have unintended consequences.

Thank you again for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Sarah Pillsbury at 271-1168 or me at 271-3449.

Sincerely,

Michael P. Nolin
Commissioner

cc: Representative Cilley
Representative Kearns
Representative Cataldo
Representative Spang
Senator Hassan
Senator Estabrook